

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**LAWRENCE M. SMITH AND
UNITED STATES OF AMERICA, *ex rel.*, §
Plaintiffs, §
§
v. § Civil Action No. 3:12-CV-4377-M
§
DEION L. SANDERS, *Individually* §
ET AL., § Referred to U. S. Magistrate Judge**

**PLAINTIFFS' MOTION TO STRIKE PLEADINGS, ENTER DEFAULT, AND ENTER
DEFAULT JUDGMENT AGAINST DEFENDANT, PRIME TIME ASSOCIATION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME United States of America ex rel, Lawrence M. Smith hereinafter called "Plaintiffs," with Plaintiffs' Motion To Strike Pleadings, Enter Default, And Enter Default Judgment Against Defendant, Prime Time Association. In support, Plaintiffs' will show as follows:

I.

On October 31, 2012, on behalf of the United States of America (USDA), Plaintiff, Lawrence Smith (Relator) filed suit (Case Number 3:12-cv4377) against Defendants, Prime Time Association and others, seeking damages arising from violations of the False Claims Act 31 U.S.C. § 3729-3730, and to recover treble damages and civil penalties pursuant to said False Claims Act, 31 U.S.C. § 3729-33. Further, on August 7, 2013, Plaintiff, Lawrence Smith (Relator), on behalf of the United States of America (USDOE) filed a second (2nd) (3:13-cv-3106-M) suit against Defendant, Deion Sanders and others seeking damages arising from

violations of the False Claims Act 31 U.S.C. §§ 3729-3730, and to recover treble damages and civil penalties under said False Claims Act, 31 U.S.C. §§ 3729-33. On May 27, 2015, an ORDER was issued consolidating these cases: 3:13-cv-3106-M, with lead case 3:12-cv-4377-M.

II.

On August 11, 2017, (doc. 348), the honorable Magistrate Judge, Irma Carrillo Ramirez signed an Order stating that: “The motion to withdraw is GRANTED, and the attorneys for Mr. Sanders and Prime Time Association are hereby relieved of their duties of representation in this case.” Defendant, Prime Time Association, attorneys were permitted to withdraw. Also, on August 11, 2017, signed an Order (doc. 349), specifically providing “Here, defendant, Prime Time Association must appear through licensed counsel within **TWENTY-ONE** (21) days from the date of the order. If licensed counsel has not entered an appearance on behalf of the artificial entity defendant within that time, it will be recommended that its defenses be stricken without further notice and that the Court conduct further proceedings in accordance with the law, including but not limited to, entry of an order of default and/or default judgment.” Plaintiffs will show that more than fourteen (14) months have expired after the entry of the above described ORDER, and Defendant, Primetime Association has wholly failed to comply with said order.

III.

Defendant, Prime Time Association, acting by and through, pro se defendant, Deion L. Sanders, as one of the lead conspirators in this cause, has been complicit in committing at least 111 false statements and/or claims to defraud the United States of America (USDA). Said defendant, Prime Time Association, on behalf of pro se defendant, Deion L. Sanders has wrongfully received a total of at least \$197,930.83, in federal funds as a result of such false statements in federal funds and claims against the United States Department of Agriculture. On

behalf of Plaintiff, United States of America, Plaintiff/Relator, Lawrence M. Smith, has attached the following Exhibit: "A", Exhibit "B," each of which is incorporated herein by reference for all purposes, as evidence of the damages sustained by the United States of America resulting from the wrongful conduct of said defendant, Prime Time Association and in violation of the False Claims Act 31 U.S.C. §§ 3729-3730:

- a. Exhibit "A" (2 pages), which is a true copy of the Texas Department of Agriculture Food and Nutrition record of claims paid to Prime Time Association Summer Food Service Program for the year 2011. The "Business Records Affidavit" relative to the claims made by defendant, Primetime association, was not available due to the record retention law contained and described in 7 CFR 225.8(a) of the USDA Summer Food Service Program 2011 Administrative Guidance for Sponsors
- b. Exhibit "B" (5 pages), is a true copy of the Texas Department of Agriculture "Business Records Affidavit", which documents all claims paid in 2012 by the Texas Department of Agriculture to Defendant, Prime Time Association.

VII.

Defendant, Prime Time Association, and pro se defendant, Deion L. Sanders were complicit in making and conspiring to make false and fraudulent records or statements which are material to false claims in violations of the False Claims Act, 31 U.S.C. §§ 3729-33; and are said defendants are liable to the United States Government for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990- (28 U. S. C. 2461 Stat; Public Law 104-410); plus 3 times the amount of damages which the Government sustains because of the act or acts of said defendants. Defendant, Prime Time Association is an individual person, as defined by FCS § 3733 (l) (4).

The Court should strike the pleadings of Defendant, Prime Time Association and rule that Defendant, Prime Time Association, has defaulted on the issue of liability for the wrongful conduct as described in Plaintiffs' allegations set forth in this cause, and assess damages in this cause and against said Defendants, in an amount it finds to be in accordance with the law and the factual evidence in this cause, and assess civil penalties and treble damages as required by law.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant Plaintiffs' Motion To Strike Pleadings, Enter Default, and grant Default Judgment against Defendant, Prime Time Association in the amount described above, plus treble damages and civil penalties in accordance with the False Claims Act, 31 U.S.C. §§ 3729-33. Further, Plaintiff's pray to recover their costs expended in filing this suit; prejudgment and post judgment interest; and further relief at law or in equity to which Plaintiffs show themselves justly entitled, all according to law as described in *Sindhi v. Raina*, No. 3:15-CV-3229-D, 2017 WL 4167511, at *3 (N.D. Tex. Sept. 20, 2017), affirmed by the 5th Circuit Court on September 25, 2018.

Respectfully submitted,

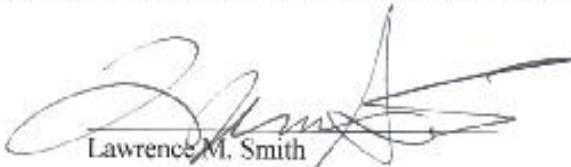
/s/ Don R. Stewart
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VERIFICATION

STATE OF TEXAS §
§
COUNTY OF TARRANT §

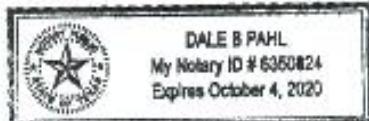
BEFORE ME, the undersigned Notary Public, on this day personally appeared Lawrence M. Smith, who after identifying himself to me and being duly sworn by me, on his oath deposed and said:

"My name is Lawrence M. Smith. I am the Plaintiff/Realtor in the above-numbered and styled cause. I am not disqualified from making this affidavit for any reason. I have read and understand the foregoing Plaintiffs' Motion To Strike Pleadings, Enter Default, And Enter Default Judgment Against Defendant, Prime Time Association and all exhibits attached thereto. I have personal knowledge of the facts stated in said documents and swear and affirm that such facts are true and correct."



Lawrence M. Smith

SUBSCRIBED AND SWORN TO BEFORE ME on the 5th day of November 2018, to certify which my hand and official seal.




Dale B Pahl
Notary Public in and for

the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Motion To Strike Pleadings, Enter Default, And Enter Default Judgment Against Defendant, Prime Time Association has been filed via CM/ECF electronic filing on this 5th day of November, 2018.

Clay R. Mahaffey, Assistant United States Attorney
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/s/ Don R. Stewart
Don R. Stewart, Attorney for Plaintiff ex rel